

Aberystwyth University

Affordable Food and Human Rights

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Gwell Cysylltiadau Busnes Organig



Better Organic Business Links

Affordable Food and Human Rights

Report of a seminar held at Aberystwyth University
on 29 April 2015

	FULL SHARE	HALF SHARE
Carrots	600g	300g
Onions (half bought in / half new season!)	600g	300g
* Peas Small handFull		250g
* Sprouting Broccoli	30gr	15gr



David Frost, Organic Centre Wales consultant
Naomi Salmon, Aberystwyth University

Better Organic Business Links – Gwell Cysylltiadau Busnes Organig

Organic Centre Wales secured £2 million for The Better Organic Business Links (BOBL) project, to deliver sustainable growth to the Welsh organic sector over six years: 2009-2015.

Opportunity to promote sustainability

The BOBL project gives the organic sector in Wales a unique opportunity to:

- Develop new, emerging and existing markets for organic produce.
- Innovate in farming, processing and product development.
- Promote sustainable practices on farms, in abattoirs, in cutting rooms and kitchens and along the food chain.
- Raise market awareness among producers and increase sales across the range of outlets.

Tackling all parts of the supply chain

The BOBL project is working in partnership with a range of specialist providers to deliver these opportunities by focusing on:

1. Driving innovation through trials and research.
2. Supporting market development opportunities such as agri-tourism and supply chain efficiency programmes.
3. Disseminating up to date market intelligence, by commissioning detailed, focused consumer attitude surveys.
4. Addressing key structural problems within the sector, such as imbalances in organic horticulture supply and demand, and the availability of organic pullets.
5. Cross cutting issues: Sustainable Food Communities and Secure Alternative Markets.
6. Running an integrated communications campaign to help the sector deliver clear messages about the benefits of organic food and farming.

By strengthening the sector at all points along the supply chain, the project aims to leave a legacy of a more robust, responsive and sustainable organic industry in Wales.

The project is funded under the Rural Development Plan for Wales 2007-2014, which in turn is funded by the Welsh Assembly Government and the European Agricultural Fund for Rural Development.

For further information on the project please see:

<http://www.organiccentrewales.org.uk/business-bobl.php> and <http://boblproject.org.uk>.

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1 Executive summary

On 29 April, 2015 Organic Centre Wales (OCW) hosted a seminar on *Affordable Food and Human Rights* as part of the Better Organic Business Links (BOBL) project. The seminar was held at Aberystwyth University. A group of food researchers and activists, students, growers and consumers gathered to discuss issues raised by two speakers, David Frost and Naomi Salmon. The two presentations have been developed into referenced articles which are presented below.

David spoke about how consumer access to good, and particularly organic, food can be improved during a period of increasing income inequality and declining social justice. This requires action at all levels: through government support to food production, through movements for social justice and through practical action by community groups and retailers.

Naomi presented a legal perspective to demonstrate how a human rights approach can be used to direct the focus of food policy towards increased access to good food across the whole population, while also meeting the challenges of sustainability and climate change. European and international human rights law clearly enshrines the right to food of good quality and gives many pointers towards understanding how our food systems might be improved. It is not readily enforceable in the way that trade law is, but it does provide a useful language for food campaigners, allowing them to reframe their activities in terms of fundamental human rights and show the wider significance of their work.

This paper is offered as a means of guiding and strengthening the current debate on 'food poverty' and more details are available from the authors.

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2 How can good food be made more widely available to people on low incomes?

David Frost

In the UK, social justice is declining while income inequality is rising. Across Europe and in all western societies, social divisions have been increasing. Top incomes have been surging forward and inequality rising with no sign of it peaking.¹ There is, on the contrary, accumulating evidence of growing social divisions. In a 2014 report, Schraad-Tischler and Kroll compared social justice in 28 EU member states. Their report showed that in the majority of countries social justice has declined in the course of the financial crisis. The report used a 'Social Justice Index' which measured, poverty prevention; equitable education; labour market access; social cohesion and non-discrimination; health; and intergenerational justice.

Using this index, in 2014, the UK was ranked 13th out of 28 countries - just above the EU average. The UK has a relatively high degree of income polarisation and ranks 22nd when measured by the Gini coefficient (a measure of the extent of inequality).

Looking more closely at the index shows that the position of the UK is mixed. For example, in the case of poverty prevention, the UK ranks high at 6th in terms of severe deprivation among the over 65s, but ranks much lower (23rd) for the proportion of the population living in quasi-jobless households. The report notes that there is a total of 31.2 percent of UK children at risk of poverty or social exclusion, putting the country at 18th place.

One reading of the index is that the UK ranks quite highly in terms of social justice for elderly people but less so for the general population and for children and young people. What it shows for the UK is that institutions of the welfare state, particularly the NHS, the education system and the state pension are continuing to protect people from the worst effects of austerity, whereas in the wider economy and in the labour market there is in-work poverty, income polarization, and a high proportion of the population living in quasi-jobless households.

Much of the discussion of the effects of income inequality has concentrated on the impact of low incomes on child poverty and the consequences for health and education. There has been much less discussion of the impact of low incomes on food and health, but now even politicians are waking up to what the *Feeding Britain* report describes as, "*the erosion of an effective national minimum that has led to the existence of hunger and the rise of the food bank movement in its wake.*"²

The Report estimates that up to one quarter of people relying on food banks are in low paid work and it acknowledges that the National Minimum Wage is too low to provide a failsafe system against hunger.

In this situation, how can we tackle food poverty? How can the best, nutritious food be made more widely available to those on low incomes? There are three strategies to consider:

- Can farm subsidies be reformed to ensure good quality food is affordable for everyone?

¹ Schraad-Tischler and Kroll (2014) Social Justice in the EU – A Cross-national Comparison. Social Inclusion Monitor Europe (SIM) – Index Report; Piketty, Thomas (2014) Capital in the 21st Century

² *Feeding Britain - A strategy for zero hunger in England, Wales, Scotland and Northern Ireland*. The report of the All-Party Parliamentary Inquiry into Hunger in the United Kingdom
<https://foodpovertyinquiry.files.wordpress.com/2014/12/food-poverty-feeding-britain-final.pdf>

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- Can community groups and ethical retailers help reduce the price barrier?
 - Can we improve social justice by the fairer distribution of quality food?

2.1 Reforming farm subsidies

According to the European Commission, 20% of the 13.7 million full-time farmers in the EU receive 80% of Common Agricultural Policy (CAP) aid³. This is explained by the fact that 20% of farmers own 80% of farmland.

Most of the payments go to farmers who are least likely to need it and because organic farmers tend to have smaller holdings, they receive a very small proportion of overall CAP payments. And, as George Monbiot has argued⁴, under the current system, the rate of farm consolidation is 2% per year (faster than any time since the Enclosure Acts), and land prices have become so high it prevents new entrants to the industry. Although the CAP was established with the laudable aim of guaranteeing stable prices to farmers and to prevent the kind of food shortages that existed in the early part of the twentieth century (and through most of human history) it now contributes to inequality and injustice: large farmers' benefit from CAP subsidies while the poorest in society are suffering from welfare cuts and while there is deregulation for rich landowners who receive farming subsidies there is increasing re-regulation of the poorest in society claiming welfare support.

Farm subsidies - ways forward?

Many groups are calling for changes to the CAP in the UK and across Europe. There are calls to reform the system of farm subsidies and to increase the supply of high quality and organic food to the market at prices within the reach of all consumers, even those with the lowest incomes. The Landworkers Alliance is prominent in the UK, and in 2014 they argued, *“Subsidies should be directed towards those farmers who are delivering social and environmental goods as well as producing food, to bring prices for 'eco-products' in line with conventional food prices”*⁵.

For many reasons we need low energy forms of agriculture with support for small scale organic farms in re-localised economies rather than an increasingly industrial food system.

A note on organic farming in Wales

In many ways, Wales has been in the vanguard of support for organic farming. There have been conversion and maintenance grants funded under Agri-Environment Schemes (AES) since 1996, and these are now available to farmers through Glastir Organic. Free on-farm advice on organic farming was provided through the Organic Conversion Information Service (OCIS) from 1997 until 2007 and more generally under the Welsh Rural Development Plan's Farming Connect programmes. A centre for excellence, Organic Centre Wales was set up on the recommendations of Wales' first Organic Action Plan and has received Welsh Government funding since 2001⁶.

It's a reflection of this level of public support that Wales has the highest proportion of organic agricultural land among the countries of the UK. The overall UK average is 3.3%. In Wales, in 2015 the proportion is 6.5%, having slipped back from a previous high of 8%, but this figure is still higher than England (3.5%), Scotland (2.6%) and Northern Ireland (0.9%)⁷.

³ European Commission, Agriculture and Rural Development http://ec.europa.eu/agriculture/faq/index_en.htm

⁴ George Monbiot (2015) "A new future for the land work" *Oxford Farming Conference* <http://www.ofc.org.uk/conference/2015/2015-conference-0> Video available at <https://vimeo.com/116297032>

⁵ The Landworkers' Alliance (2014) Feeding the Future. <http://landworkersalliance.org.uk>

⁶ <http://www.organiccentrewales.org.uk/strategy-actionplans.php?menuopt=6.2>

⁷ Soil Association Market report, 2015

But what is the future of support for Organic Farming in Wales? Can it help achieve a low energy agricultural system by supporting small-scale organic farms to re-localise the Welsh food economy? One recurring issue is the lack of availability of fresh organic produce – fruit and vegetables – and the need to increase production. One way to address this is to change the area-based criteria for agricultural support payments. Currently, for Glastir Organic, the minimum area of land that must be entered into the scheme has increased to 3 ha. This brings Glastir Organic into line with other elements of Glastir, and indeed many agri-environment schemes across the EU. It means however, that a number of producers, mostly small-scale horticultural growers, are denied entry into the scheme. Changing the 3ha threshold eligibility criteria coupled with funded co-operative group schemes would provide small-scale growers with access to support payments, training and consultancy and do much to develop organic horticulture⁸.

If we can't wait for CAP reform there are things to be done at the local level to produce good food that is cheaper and accessible for all– such as growing your own fruit and vegetables, getting an allotment, supporting city farms and gardens, and Community Supported Agriculture (CSA). Near St Davids in Pembrokeshire, for example, the Caerhys CSA comprises 5 acres (2ha) of vegetables plus 2 polytunnels and provides organic food for 52 households⁹.

2.2 Improving social justice by the fairer distribution of quality food

In recent decades there has been a decline in local food distribution. By establishing direct supply chains from producers to stores in the 1980s and 1990s, the multiple retailers effectively bypassed wholesale markets. Supply chains to supermarkets became increasingly complex and more of the profit was taken by the middle links in the chain. Supermarkets used their buying power to bear down on the prices paid to their suppliers - farmers and growers were caught in a classic price-cost squeeze, and in order to serve the daily-changing demands for fresh produce a casualised and largely immigrant labour force emerged working with an often unregulated system of gang masters¹⁰. They have also been accused of aggressive lobbying to get their own way on store development, both on the high street and out of town.

The expansion of the multiple retail trade was driven by technologies such as vegetable packing lines; product bar codes and point of sale (POS) scanning; and 'Just in Time' deliveries modelled on Japanese business models¹¹. As the multiples developed, wholesale markets went into decline and many wholesalers were forced to cease trading and downtown greengrocers, butchers and bakers closed – unable to compete with the competition from supermarkets. One result has been the 'hollowing out' of town centres and the emergence of food deserts and, effectively, a restricted food choice for consumers – the only choice between almost identical large format retailers – often in out of town locations.

⁸ See also, <http://organicfoodandfarming.org.uk/is-small-still-beautiful/>

⁹ Gerald Miles (2015) "Food in the Community Workshop" *Resilience and Opportunity – Sustainable Organic Marketing and Production in Wales*, BOBL Better Organic Business Links Closing Conference, Royal Welsh Showground Llanewedd 21 May 2015. <http://www.organiccentrewales.org.uk/news-item.php?lang=en&id=542>

¹⁰ Felicity Lawrence (2004) *Not on the Label: What Really Goes into the Food on Your Plate*; Joanna Blythman (2007) *Shopped: The Shocking Power of British Supermarkets*

¹¹ For discussion of the effects of the technologies associated with multiple retailing, see, A. Murcott Ed (1998) *The Nation's Diet: The Social Science of Food Choice*. Addison Wesley Longman. For details of the development of the 'Just in Time' system in Japan, see Duncan J Watts, (2004) *Six Degrees: The science of the connected age*. Vintage

Such has been the dominance of the multiple retailers that four supermarket chains took just over three out of every four pounds that were spent on food and groceries in the UK in 2013¹². Access to food, particularly foods recommended for a healthy diet, for low-income households in poor neighbourhoods in British cities has become an increasingly important aspect of social exclusion and health inequality¹³.

Food marketing - ways forward

One way forward would be to limit the power of supermarkets. The *Tescopoly Alliance*, launched in 2005, is an umbrella group including Friends of the Earth and the New Economics Foundation (NEF) whose aim is to curb the market power of the major UK supermarkets. Similarly the New Economics Foundation (nef) has proposed that at the local level, no one supermarket should control more than one-third of the market. Another approach is to support new supermarket models – not just cheaper, discount versions of the biggest players but rather those that offer real alternatives such as the supermarket without prepackaged goods, which opened in Berlin in 2015. Its goal is to do away with disposable packaging. They offer everything in bulk and customers fill the produce in any containers they choose to bring. As they say, “...you are saving all that packaging waste. We want a revolution - unpackaged food for everyone!”¹⁴

At the local level, the approach is to buy food direct from producers. For example, organic boxes can be 20% cheaper than the equivalent organic products in all the big supermarkets¹⁵ and the farm-gate price of many organic products is often the same as non-organic. Cost (and profit) is added along the chain so the shorter the food supply chain, the fewer the cost centres.

Buying from independent retailers, farm shops and farmers markets can also mean lower food bills if the shopping bag is filled with seasonal produce. Some foods may be less expensive all year round but other foods are subject to seasonal variation – they may be cheaper in the independents when in season but may be dearer out of season. For example analysis of data collected by the Soil Association shows that organic potatoes were on average 32p/kg more expensive in supermarkets between 2013 – 2015, but with carrots there was only a small variation in the price difference, whereas with cauliflowers there was big seasonal variation in prices¹⁶. According to Ben Llewellyn of the Soil Association, a comparison of the average prices of selected crops over the three month period November, December, January in 2013/14 and 2014/15 shows that there were small price variations in individual crops, but his main observation is that supermarkets appear to decide upon a price and stick to it throughout the year, with little or no reflection of seasonal variability and they also track one another's prices with remarkable accuracy¹⁷.

¹² Kantar Worldwide, 2013

¹³ Neil Wrigley (2002), "'Food deserts' in British cities: policy context and research priorities." *Urban studies* 39, no. 11 (2002): 2029-2040

¹⁴ <https://socialimpactfinance.startnext.com/original-unverpackt>

¹⁵ <http://www.theguardian.com/environment/blog/2012/jul/10/cheap-food-sustainable-farming-environment> http://www.riverford.co.uk/news/older_news/news2008/2008-August/boxes-knock-the-socks-off-supermarket-prices

¹⁶ Author's data analysis

¹⁷ Pers. comm.

2.3 *How community groups and ethical retailers can make food affordable*

In the UK the third sector has been struggling to rise to the challenge of food poverty. Food Banks are currently used by up to 1 million people and social supermarkets offer discounted food – supplied by major retailers – exclusively to those in poverty. FareShare, for example, distributes food that is surplus due to over-production; labelling errors; short shelf-life; etc. The organization has Regional Centres throughout the UK that redistribute food to over 1,700 charities and community projects.

Food Cooperatives can make fresh food available to those on low incomes at affordable prices. The Welsh Food Cooperative (funded by the Welsh Government until September, 2015) aims to provide healthy food to the community through 340 buying groups. Regular customers save around £220 a year compared to buying in supermarkets because the direct supply chain from growers keeps prices down. According to Mark Jones, Wales Produce Manager, Welsh Rural Regeneration Unit, food cooperatives provide many other benefits under the headings of health, social inclusion, education, community links and reducing food miles.¹⁸

There are also innovative examples of ethical and cooperative retailing from Europe. In Germany, which has the largest market in Europe for organic products, retailers are adopting sales methods that have been described as examples of an emerging collaborative economy and embedding social enterprise ethics into business. These methods expand the market for organic fresh produce by reducing the price barrier for low-income consumers and provide additional benefits such as employment opportunities (including for those with varying levels of ability) and specialised staff training.

In Berlin, the Feuerbohne organic-shop-collective want to make it possible for a larger number of people to buy organic food and so they have two price options: the solidarity price and the reduced price. They say, *“By paying the Soliprice you make it possible for people with less money to come to our shop. Some pay more, others pay less. If you want to choose the reduced price just tell us before paying or add one of the dark green cards to your shopping which you’ll find at the counter.”*¹⁹

Also in Berlin, Biosphäre is a not-for-profit retail shop. They say, *“Organic for everyone. Our two price system with a reduced price for those on a low income means that good quality organic food doesn’t have to be a luxury”.*

In Zurich, Tor14, is a cooperative whose objective is to provide its members with high quality, organic and GM free produce, where possible directly from the producer, at fair and affordable prices. Their shop offers organic products on average 30% cheaper than other foodshops in Switzerland and producers are paid a fair price. They also operate a weekly vegetable box ordered from the shop which can also include other groceries with special offers such as bulk orders of citrus fruits from Spain or beef from a whole carcass from a Demeter farm etc.

There are also Food Assemblies across Europe. The idea started in France in 2011 and by 2014 there were over 500 Food Assemblies across France, Belgium, Germany and Spain. The model

¹⁸ Mark Jones (2015) “Food and the Community” *Resilience and Opportunity – Sustainable Organic Marketing and Production in Wales*, BOBL Better Organic Business Links Closing Conference, Royal Welsh Showground Llanewedd 21 May 2015. <http://www.organiccentrewales.org.uk/news-item.php?lang=en&id=542>

¹⁹ <http://feuerbohne.blogspot.de/english/>

arrived in the UK in July of that year²⁰. Food Assemblies make novel use of pop-up markets and the Internet. Organisers first find a venue to host the weekly pop-up 'market', and then they recruit farmers and producers and the people who want to buy local food products. The produce is available to select online. Producers fix a price for their products, and the minimum orders that must be met for delivery to be viable. Members usually have a fixed period during which they can place an online order. There is no weekly commitment to buy and no subscription. On distribution day, members pick up their purchases directly from producer sat the marketplace.

Organic producers, and growers in particular, have adapted many times to market changes. Their marketing history covers wholesaling, traditional greengrocers, marketing co-operatives, multiple retail chains, box schemes and farmers' markets. Adopting social media, box schemes are increasingly morphing into on-line delivery systems and online platforms for buying groups have been set up. Despite these developments, organic market penetration is failing to reach poorer socio-economic groups. This inhibits the growth of the organic fresh produce market and has the disadvantage of labeling organic produce as 'too expensive' and 'only for the well-off'. Stores with the highest organic sales and with the best environmental, fair trade and animal welfare standards supply the richest groups in society but they could also adopt a 'fair-trade' attitude to feeding the poorest in society as well: They could replace the current 'value range' approach with a two-price system for the best food in store to benefit those on low incomes.

In current discussions of inequality and social justice there is little reference to food apart from food banks and the impact of low incomes on child poverty and the consequences for health and education. In these discussions, organic food rarely merits a mention but also in the organic farming discourse there is minimal debate about how organic food and its benefits can be made available to those on the lowest incomes. The suggestions and ideas discussed here raise the importance of affordable food for the debate about inequality; and they introduce the serious issue of social justice into debates about the value of organic food²¹.

²⁰ In 2014 [the Hackney Wick Assembly](#) was the first in the UK

²¹ See, <http://organicfoodandfarming.org.uk/organic-food-can-we-reduce-the-price-barrier/>

3 Food and human rights

Naomi Salmon

The combined impacts of stagnating wages, unemployment, welfare cuts and rising food and energy prices are pulling more and more people into poverty. Today, at least 13 million people in the UK are living below the breadline.²² Over the twelve month period between 2013 and 2014, the three major food-bank providers distributed in the region of 20,247,042 free meals – representing a 54% increase on the previous year.²³ Aside from the increasingly pressing problem of poverty, and the food insecurity that inevitably flows from this, the country is also in the grips of an obesity epidemic. Across England and Wales, almost two thirds of the adult population are now overweight or obese.²⁴ The correlation between poverty and obesity, and between obesity and health and well-being, means that poor diet also has significant implications for the public purse. Indeed, it has been estimated that by 2050, diet-related disease will cost the NHS in the region of £50bn per year.²⁵

The way we eat is unhealthy and socially unjust. It is also inherently unsustainable and bad for the planet. Thus far, we have been fortunate. Our nation's relative wealth and its strength as a key player on the global food markets have provided some insulation against the wholesale food insecurity that continues to plague many less affluent societies around the world. However, as global temperatures creep up, and unpredictable weather patterns become the norm, the UK will certainly not be immune from such problems. There is no time to waste. The number of UK citizens living below the breadline is already unacceptably high. Radical action is now urgently required if the rising tide of food poverty and food insecurity is to be reversed.

The question, then, is how do we shift food policy onto a more socially just and ecologically sound footing? How can the machinery of the state – of policy and law – be utilised to ensure that the food market fulfils what should be its primary function: the function of feeding the people and feeding them well – without jeopardising the food security of future generations? This where the language of fundamental human rights can be brought into play.

The case for reframing food governance, and explicitly pulling it into line with the spirit and the letter of human rights law, is a strong one. Notwithstanding difficulties of enforcement, the language of human rights – that recognises the fundamental and universal entitlements of every member of the global human community – enjoys significant moral and legal currency. The moral currency of human rights arguments as a driver for food governance reform flows from the core

²² MacInnes, T. et al (2014), *Monitoring Poverty and Exclusion 2014*, Joseph Rowntree Foundation. See Indicator 6B at p.27. The precise figures vary depending upon which baseline is applied. According to NPI's analysis of DWP data, if the 2007-8 fixed threshold is applied, the total number of people living in poverty rises to around 16 million.

²³ Cooper, N., Purcell S., & Jackson, R. (2014), *Below the Breadline: The Relentless Rise of Food Poverty in Britain*, Church Action on Poverty, Oxfam GB, Trussell Trust, at p.4.

http://www.trusselltrust.org/resources/documents/foodbank/6323_Below_the_Breadline_web.pdf

²⁴ Davies, S.C. *Annual Report of the Chief Medical Officer, Surveillance Volume, 2012: On the State of the Public's Health*, London: Department of Health, 2014. For a simple overview of overweight and obesity levels in England, see p65 of the report.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298297/cmo-report-2012.pdf; For the most recent Welsh figures, see Welsh Government, *Wales Health Survey 2014*, at <http://gov.wales/statistics-and-research/welsh-health-survey/?lang=en>

²⁵ Butland, B., Jebb S, Kopelman P, McPherson K, et al. (2007) *Foresight, Tackling Obesities: Future Choices – Project Report*, Second Edition. UK: Government Office for Science, 2007, at p.5
<http://www.bis.gov.uk/assets/foresight/docs/obesity/17.pdf>

values of universalism and equity that lie at the very heart of the international human rights framework and which must, undoubtedly, be the primary guiding principles informing and shaping any meaningful reconfiguration of both domestic and global food markets.

3.1 The legal basis of the human right to adequate food

The legal currency of the human right to food flows from both its implicit and explicit expression within the general framework of European and international human rights law. This core entitlement is implicit within – and integral to – key civil and political, and economic and social rights, including the fundamental right to life²⁶ the right to respect for private and family life,²⁷ and the right to social security and welfare support.²⁸ Food security is, after all, an essential prerequisite for the enjoyment of all such fundamental rights. The human right to food has also been *explicitly* entrenched within two of our most important international human rights instruments: Article 25 of the non-binding but highly influential *Universal Declaration of Human Rights 1948*,²⁹ and Article 11 of the legally authoritative *International Covenant on Economic, Social and Cultural Rights 1966*.³⁰ In both cases, the right to ‘adequate food’ is framed as a key element of the broader umbrella right to ‘an adequate standard of living.’

Thus, Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* provides that:

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*³¹

²⁶ The fundamental right to life was first set down in Article 3 of the influential but non-binding *United Nations Universal Declaration of Human Rights of 10th December 1948*. (The *Declaration* is referred to hereafter as the *UNDHR*). The full text of the *UNDHR* is available at <http://www.un.org/en/documents/udhr/>. At the regional level, this core entitlement is entrenched in Article 2 of the legally authoritative *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Council of Europe, 4th November 1950, which entered into force 3rd September 1953. (The *Convention* is referred to hereafter as the *ECHR*). The full text of the *ECHR* can be found at http://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁷ *ECHR*, Article 8.

²⁸ A human right to social security was first set down in Article 22 of the *UNDHR*. This economic and social right subsequently acquired a stronger legal status by virtue of Article 9 of the *International Covenant on Economic, Social and Cultural Rights of 16 December 1966*. (The *Covenant* is referred to hereafter as the *ICESCR*). The full text of *ICESCR* is available at https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf. At the European level, the Council of Europe’s, *European Social Charter (Revised)*, 3 May 1996, ETS 163, recognises the human rights to social security and social assistance (Articles 12 and 13, respectively). The full text of the *Charter* is available at <http://conventions.coe.int/treaty/en/Treaties/Html/163.htm>. Whilst the strongest regional human rights instrument – the *ECHR* – does not expressly provide for the human right to social security, such an entitlement does fall within its scope. Issues relating to the provision of social security have been deemed to fall within the scope of a number of key *ECHR* rights, including Article 8 (private and family life) and 14 (prohibition on discriminatory treatment). It is worth noting, in particular, that the European Court of Human Rights has recognised social security payments as ‘property’ falling within the scope of Article 1 of Protocol No. 1. to the *ECHR*. For an overview of access to social security as a human right under the *ECHR*, see Gómez-Heredero, A. (2007) *Social Security as a Human Right: The Protection Afforded by the European Convention on Human Rights*, Human Rights Files, No.23, Council of Europe Publishing, 2007. The full text of this paper is available at <http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-23%282007%29.pdf>

²⁹ *UNDHR*, Article 25, see note 7, above for link to full text.

³⁰ *ICESCR*, Article 11, see note 7, above.

³¹ *ICESCR*, Article 11(1), *Ibid*.

The second paragraph of Article 11 then goes on to set out, in broad terms, the obligations imposed upon the state, vis-à-vis the realisation of the right to adequate food:

The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

*(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*³²

At this point, it is appropriate to explain, briefly, how international human rights law works, for when it comes to those rights that are primarily economic and social in their character, it is important to appreciate two things. The first is that in contrast to civil and political rights, which generally require states to *respect* individuals' entitlements and to *desist* from abusive (unlawful) behaviour, the realisation of economic rights – such as the right to adequate food – require rather more by way of positive (and economically costly) action from states. In light of this fact, this broad class of rights have traditionally been characterised as 'progressive' in nature – which essentially means that the precise extent of an individual state's obligations will, to some extent at least, fall to be determined against the benchmark of 'available resources.'³³ That is, beyond the most basic core duty of the state to ensure that the population does not go hungry – which persists even in even in times of natural or other disasters – various factors, such as geographical location, and prevailing climatic and economic conditions, will inform any assessment of state performance, vis-à-vis the food rights of the population.³⁴ In essence, the principal obligation imposed upon governments can be summarised as the obligation to move "*as expeditiously as possible*" towards the full realisation of the right, this being achieved only when every man, woman and child enjoys reliable access to adequate food.³⁵

The second point to bear in mind is that although Article 11 of the *Covenant* certainly *imposes legally binding* obligations on states parties, as is commonly the case with rights that are characterised as 'progressive' in nature, there is no full-blown judicial or quasi-judicial body in place to rigorously police state compliance. Instead, the specially mandated UN committee, the *Committee on Economic Social and Cultural Rights*, is responsible for overseeing the implementation of the *Covenant's* provisions, using the 'soft' reporting and monitoring

³² ICESCR, Article 11(2), *Ibid*.

³³ ICESCR, Article 2(1) provides that: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

³⁴ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.12. on the right to adequate food, (Article 11 of the Covenant)*, E/C.12/1999/5, 12 May 1999, at para. 6.

³⁵ CESCR, 1999, *ibid*, at para. 14. See also, the CESCR's *General Comment No.3: The nature of States parties' obligations (Art. 2, para. 1, of the Covenant)*, E/1991/23, where the Committee provides an authoritative account of the nature and extent of the general obligations imposed upon states parties by Article 2 of the *Covenant*. The full text of this document is available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4758&Lang=en.

mechanisms provided for under this treaty framework, and issuing recommendations to governments where necessary.³⁶ Enforcement at the international level is not, then, ‘strong’ in the formal sense of the term.

The scope for direct enforcement of economic and social rights at the national level, via domestic court proceedings, varies from state to state. The extent to which national courts may exercise jurisdiction over such matters will be determined by a nation’s Constitution or, in the absence of a written constitution entrenching key rights, jurisdiction will depend upon the state’s particular (constitutional) view of the status of international law. In the UK, the absence of any written constitution, alongside a broadly ‘dualist’ stance on international law, leaves the national courts with little scope to directly enforce rights set out in international treaties unless, or until, the government’s obligations have been actively incorporated into domestic law by Parliament. Thus, as things stand, it is not possible to rely, directly, on Article 11 of the *Covenant* to challenge UK government policies that undermine citizens’ ability access to adequate food.

However, by virtue of the *Human Rights Act 1998*,³⁷ it is possible for an individual to make a claim for judicial review on the grounds that the state has unlawfully infringed one or more the civil and political rights guaranteed by the *European Convention on Human Rights*.³⁸ As a result of this, and by virtue of the inevitable overlaps between civil and political rights and economic and social rights, a number of cases have been heard by UK courts – including various cases challenging decisions such as those relating to benefits entitlements – where food rights have most assuredly, albeit indirectly, also been at issue.³⁹ In the context of Wales, it will be interesting to see how the newly enacted *Well-being of Future Generations (Wales) Act 2015*,⁴⁰ plays out. Although food security is not directly addressed within this legislation, the ‘sustainability duty’⁴¹ imposed upon all Welsh public bodies by the *Act*, and the associated ‘well-being goals’⁴² may offer another avenue for indirect enforcement of the human right to food at the domestic level.

Notwithstanding the difficulties of enforcement at both the international and, in the case of states such as the UK, at the national level also, the power of the ‘soft-law’ oversight provided for under the *Covenant* itself should not be under-estimated. Despite its lack of legal ‘teeth’, the Committee on Economic Social and Cultural Rights is a highly influential body, and its recommendations have significant persuasive force. States do not want to be publicly criticised for their failure to properly

³⁶ A wealth of information about the work of the CESCR, and links to all the Committee’s publications, are available on its website, at <http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>.

³⁷ *Human Rights Act 1998*. For full text see <http://www.legislation.gov.uk/ukpga/1998/42/contents>

³⁸ *ECHR*. See note 7, above for link to full text.

³⁹ Cases where the domestic courts have considered allegations of unlawful infringements of ECHR provisions include the 2005 case of *R (Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66. There, it the House of Lords held that the withdrawal of accommodation and subsistence support from asylum seekers could amount to a breach of Article 3 of the ECHR (prohibition on degrading and inhuman treatment). A very recent case is that of *R (on the application of SG and others (previously JS and others) (Appellants)) v Secretary of State for Work and Pensions (Respondent)* [2015] UKSC 16, which concerned the indirect discriminatory impact on women of the welfare cap introduced by the *Welfare Reform Act 2012*. Here, the rights at issue were Article 14 of the ECHR (prohibition on discrimination) in conjunction with Article 1 of *Protocol 1* of the *ECHR* (protection of property). In this case, interestingly, the Supreme Court held that the indirect discrimination against women (as the largest group of single parents) that flowed from the introduction of the welfare cap could be justified and was, therefore, lawful.

⁴⁰ *Well-being of Future Generations (Wales) Act 2015* (anaw 2) http://www.legislation.gov.uk/anaw/2015/2/pdfs/anaw_20150002_en.pdf

⁴¹ *Well-being of Future Generations (Wales) Act 2015*, s.3.

⁴² The ‘well-being’ goals set out in the table in section 4 of the *Act*, *ibid*.

respect, protect and provide for the most fundamental rights of their people. Bad publicity, if effectively framed and articulately presented, can be a powerful catalyst for positive change in state policy and practice.⁴³

3.2 *Implications for material individual entitlements and state obligations*

Having set out, briefly, the moral and legal currency of the human right to adequate food, let us now move on to consider exactly what this fundamental right to ‘adequate food’ may imply, in terms of material individual entitlements and state obligations. Conveniently, some time ago, the Committee on Economic, Social and Cultural Rights published an authoritative account of the normative content of this key right – *General Comment No.12 on the right to adequate food*.⁴⁴ Therein the Committee states that the core content of Article 11 right to adequate food,

“implies the availability of food in a quantity and quality sufficient to satisfy the dietary **needs** of individuals, free from adverse substances, and acceptable within a given culture.”⁴⁵

It is notable that the Committee refers to dietary ‘needs’ here, as opposed to dietary ‘wants’. Whilst cultural tradition and context are clearly recognised as relevant to the concept of ‘adequacy’ in relation to access to food, the entitlement of the individual does not extend to the frivolous; the concept of ‘adequacy’ in this context is not to be viewed as in any sense open-ended. This is an important point: the entitlement of the individual is to have his or her dietary ‘needs’ met. This is in line with the underlying concern for universality and equity of access that underpins international human rights law. These core values and this sense of ‘bounded’ entitlement are further supported by the Committee’s explanation of the relationship between the key concepts of ‘adequacy’ and ‘sustainability.’

“The notion of **sustainability** is intrinsically linked to the notion of **adequate food or food security**, implying food being **accessible for both present and future generations**.”

The precise meaning of ‘**adequacy**’ is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while ‘**sustainability**’ incorporates the notion of **long-term availability and accessibility**.”⁴⁶

Thus, the fundamental human right to adequate food is underpinned by what might usefully be termed the ‘sustainability imperative’, with ‘sustainability’ being understood as encompassing ecological and economic factors, as well as issues of equity and social justice. In terms of states parties’ obligations, then, this effectively translates into firm duty to “ensure the sustainable management and use of natural and other resources for food at the national, regional, local and household levels.”⁴⁷ Consequently, any state – particularly a wealthy and administratively capable state such as the UK - that fails to actively prioritise the ‘sustainability imperative’ within policy development, or that chooses to implement policies that directly, or indirectly, undermine the

⁴³ At the domestic level, the success of two major public sector ombudsmen – the Parliamentary and Health Service Ombudsman and the Public Services Ombudsman for Wales - also provide strong support for the general assertion that ‘soft’ law enforcement mechanisms, which rely heavily on the power of public criticism and negative publicity, can be highly effective. <http://www.ombudsman.org.uk/> ; <http://www.ombudsman-wales.org.uk/>

⁴⁴ CESCR, 1999, note 13, above.

⁴⁵ CESCR, 1999, *ibid*, at para.8. (emphasis added)

⁴⁶ CESCR, 1999, *ibid*, at para. 7. (emphasis added)

⁴⁷ CESCR, 1999, *ibid*, at para 25.

food security of sections of the population, is prima-facie, failing to live up to its obligations under international human rights law.

How well, then, does the UK's governance of the food system, from the farm through to the waste stream, measure up against the benchmark of the Article 11 right to adequate food? How well does the UK perform in terms of 'ensuring the most sustainable management and use' of key resources? How effectively has government responded to the obesity epidemic and escalating levels of diet-related disease? How do 'austerity measures' such as the benefits cap⁴⁸ fare when assessed against the benchmark of the fundamental right to adequate food? Has the state genuinely fulfilled its obligation to respect, protect and fulfil this most basic of human rights?

Despite the UK's relative wealth and its highly sophisticated food supply chain, when measured against the key benchmarks of 'adequacy', 'food security' and 'sustainability' as framed within international human rights law, the state's performance is less than impressive. The current 'productionist' model of agriculture and the free-trade oriented nature of market governance do little to tackle increasingly pressing challenges such as GHG emissions or the social injustices that have become integral features of the global food market.

In recent years, there has been much debate about the nation's 'food future' and an increasing willingness on the part of government to acknowledge the need for reform.⁴⁹ However, genuine food security, sustainability and global food justice requires a *radical* reconfiguration of practice and policy, across the whole of the food system and, thus far, there has been little sign of any genuine willingness to translate the rhetoric of sustainability into concrete actions. At the consumption end of the supply chain, policy initiatives ostensibly directed at tackling problems such as child poverty and the escalating obesity epidemic have proven to be more a public relations exercise than genuine attempts to achieve any meaningful improvements in health and well-being.⁵⁰ Despite the astronomical medium to long-term personal and economic costs associated with poor dietary health and poverty, the short-termism that characterises politics within liberal democracies such as the UK has, thus far at least, ensured that even where policy initiatives have been implemented, they have done little more than 'nibble around the edges' of these major crises.

⁴⁸ The controversial benefits cap was introduced by the *Welfare Reform Act 2012*. For commentaries on the impact of the changes brought in by this Act see, for example, Wilcox, S. (2014) *Housing Benefits Size Criteria: Impacts for Social Sector Tenants and Options for Reform*, Joseph Rowntree Foundation June 2014 ; Power, A., et al (2014) *The Impact of Welfare Benefits on Social Landlords and Tenants*, Joseph Rowntree Foundation, June 2014. www.jrf.org.uk.

⁴⁹ The following are some of the key reports: Cabinet Office (2008) *Food Matters: Towards a Strategy for the 21st Century*, The Strategy Unit, 2008; The Royal Society (2009) *Reaping the Benefits: Science and the Sustainable Intensification of Agriculture*, October 2009; DEFRA (2010) *Food 2030*; Foresight. *The Future of Food and Farming: Challenges and Choices for Global Sustainability (2011) Final Project Report*. The Government Office for Science, London.

⁵⁰ Note, for example, the inadequacy of the restrictions imposed on industry advertising of junk food to children. See, OFCOM (2007) *Television Advertising of Food and Drink Products to Children Final Statement*, February 2007, available at http://stakeholders.ofcom.org.uk/binaries/consultations/foodads_new/statement/statement.pdf. For a brief comment on this issue see, of example, Boseley, S., 'Junk food still marketed to children as companies bypass rules', *The Guardian*, 13th June 2013, available at <http://www.theguardian.com/lifeandstyle/2013/jun/18/junk-food-children-marketing-who-tv>; Note, also, the following from the World Health Organisation, WHO (2014) *Protecting children from the harmful effects of food and drink marketing*, September 2014, available at <http://www.who.int/features/2014/uk-food-drink-marketing/en/>

Across the board, from environment to welfare and public health, the process of policy reform has been characterised by short-termism and hampered by an unerring faith in the power of *The Market* alongside a keen desire to avoid the ire of powerful trading partners and the World Trade Organisation (WTO). As currently interpreted, and applied, both EU trade law and the rules of the WTO present significant barriers to timely and proactive reform of food governance at both the national and the regional levels. As time goes on, and the scale of the global food crisis escalates, interpretations of both EU and WTO law will adapt in response to shifting realities, becoming progressively more sympathetic of national efforts to promote domestic food justice and security, in an increasingly insecure world. However, by the time these inherently free-trade oriented frameworks are forced into a *responsive* shift, the default strategy will have become one of scrabbling crisis *management*, as opposed to one of structured and pre-emptive crisis prevention and *mitigation*. From a moral perspective, the latter is by far the better option. From the *legal* perspective, a concerted and proactive programme of policy reform, focused on crisis prevention and mitigation is certainly the strategy mandated by international human rights law.

3.3 Human rights as an approach for food campaigners

As has already been explained, the human right to adequate food, as set down in the *Covenant* is not, at present, *directly* enforceable in the UK. However, such problems of enforcement do not render the language of human rights impotent. There is still much to be gained from a proactive reframing of the food-futures debate along such lines. Importantly, the language of human rights pulls the disparate strands of the sustainability debate – climate change; land-use; energy; poverty; welfare policies; planning law; public health; industry governance – under a single coherent (moral and legal) umbrella. This streamlining of policy objectives and arguments, around one core theme, with the ‘sustainability imperative’ at its heart, can help to bring greater clarity and focus to the wide-ranging and complex food-futures debate.,

Cynics might argue that the free trade rules must ultimately trump concerns about alleged infringements of progressive (or aspirational) economic and social rights, at least in the short to medium term. This is not the case. In fact, if one looks at the historical evolution of international trade law and international human rights law, it is clear that the two regimes have evolved in parallel. Both systems of law rose out of the devastation of two world wars; both were originally conceived with the interests of The People in mind. The core agreements underpinning both regimes were very much concerned with social and economic well-being, and the aim of achieving continuous improvements in standards of living. In other words, the current inherently unsustainable functioning of the free-trade rules has rather more to do with politics than law. Although there is no reason to believe that the neo-liberal mind-set that now dominates the politics of global trade will change dramatically any time soon, it is still worth acknowledging that there are, in fact, no intractable systemic *legal* barriers to an overtly human-rights oriented re-framing food policy, from the domestic to the global.

What, then, on a practical level, does a human rights-led approach to campaigning offer to NGOs and others working on food-related issues? First, there is the immediate public appeal of a firmly ‘people-centred’ approach. Although NGOs working in this area are already very much focused on justice and ‘rights’ in the looser sense of the term, the language of universal human rights – of the individual’s *fundamental entitlement* to the most basic pre-requisite of life – food security – has a special potency. Thus, in moral terms, the language of human rights neatly pushes the interests of people and planet firmly to centre stage. Second, the explicit representation of damaging policies as incompatible with international and regional human rights law, adds *legal* muscle to the case

for prompt and radical policy reforms across the whole of the food supply chain. As has been seen above, the *International Covenant on Economic, Social and Cultural Rights* imposes a clear and unambiguous legal obligation on states parties to move *as expeditiously as possible* towards the full realisation of the human right to adequate food.⁵¹ Clearly, policies that have the effect of further undermining the food security of current and future generations are entirely out of kilter with this obligation. Notwithstanding problems of enforcement, then, the language of food rights certainly has significant potential as a lobbying tool. So, let us begin to realise this potential; let us take steps to reframe arguments for change in the morally and legally forceful language of the fundamental right to adequate food.

⁵¹ ICESCR, note 7 above, Articles 2 and 11. See also, CESCR (1991), note 14 above; CESCR (1999), note 13 above.